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Arizona Corporation Commission

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JAN 20 2017

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14 Attorneys for Arizona Public Service Company

11 **BEFORE THE ARIZONA CORPORATION COMMISSION**

12 COMMISSIONERS

13 TOM FORESE, Chairman  
14 BOB BURNS  
15 DOUG LITTLE  
16 ANDY TOBIN  
17 BOYD W. DUNN

18 IN THE MATTER OF THE  
19 APPLICATION OF ARIZONA PUBLIC  
20 SERVICE COMPANY FOR A HEARING  
21 TO DETERMINE THE FAIR VALUE OF  
22 THE UTILITY PROPERTY OF THE  
23 COMPANY FOR RATEMAKING  
24 PURPOSES, TO FIX A JUST AND  
25 REASONABLE RATE OF RETURN  
26 THEREON, TO APPROVE RATE  
27 SCHEDULES DESIGNED TO DEVELOP  
28 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**ARIZONA PUBLIC SERVICE  
COMPANY'S RESPONSE TO  
WARREN WOODWARD'S SECOND  
MOTION TO COMPEL**

23 IN THE MATTER OF FUEL AND  
24 PURCHASED POWER PROCUREMENT  
25 AUDITS FOR ARIZONA PUBLIC  
26 SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

27 On December 5, 2016, Intervenor Warren Woodward submitted his second set of  
28 data requests (DRs) to Arizona Public Service Company (APS or Company). That set

1 consisted of 45 questions, most with subparts. APS timely responded to Questions 9  
2 through 13, 18, and 23 through 45 (with the exception of 36 (a)). APS objected to  
3 Questions 1 through 8, 14, 22 and 36(a) on the grounds of relevancy.

4 On December 27, 2016, Mr. Woodward filed his first Motion to Compel. APS  
5 filed a timely response to the Motion on December 30, 2017. That Motion is still  
6 pending before the Commission.

7 APS further objected to Questions 15, 16(a), 17(a), 19 and 21 of Mr.  
8 Woodward's DRs, but not withstanding its objections provided Mr. Woodward with  
9 answers to the best of its ability. Mr. Woodward then filed a second Motion to Compel  
10 (Second Motion) on January 19, 2017. The Second Motion addresses solely Question  
11 19.<sup>1</sup>

## 12 ARGUMENT

13 As noted above, APS has responded to Question 19. Mr. Woodward may wish  
14 that APS kept its accounting records in a manner that allowed for easy delineation in all  
15 respects of costs associated with a particular metering technology, but in point of fact,  
16 APS simply does not have the information in the form and in the detail requested. For  
17 example, Mr. Woodward asks about cyber-security costs associated with AMI. APS  
18 clearly incurs cyber-security costs as part of its overall Information Technology (IT)  
19 budget, but it does not break down or record costs on a project basis. To gain any insight  
20 into such granularity, APS would have to review thousands of individual invoices and  
21 attempt to somehow categorize them as first, cyber-security related, and second, AMI  
22 related. Even then, many invoices would cover multiple IT projects, and any assignment  
23 of costs to AMI purely arbitrary.

24 No party is required to provide information it does not possess. This is clearly set  
25 forth in Rule 34 of the Arizona Rules of Civil Procedure, which are adopted by reference  
26 in A.A.C. R-14-3-101(A).

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28 <sup>1</sup> Both Question 19 and APS's responses are quoted in the Second Motion.

1 Rule 34 states that information requested through discovery must be "in the  
2 possession, custody or control of the party upon whom the request is served." This has  
3 long been the rule in Arizona. *See State Farm Insurance Co. v. Roberts*, 97 Ariz. 169,  
4 173-74, 398 P.2d 671, 673 (1965); *Dean v. Superior Court in and for Maricopa County*,  
5 84 Ariz. 104, 114, 324 P.2d 764, 771 (1958). It is also the established standard in other  
6 jurisdictions. "It is a rule of universal application that a party who does not have  
7 possession and control of documents cannot be ordered to produce them for discovery."  
8 *City Savings Ass'n v. Mensik*, 260 N.E.2d 110, 114 (Ill. App. Ct. 1970). *City Savings*  
9 cites cases from Missouri, New York and Texas as well as the *Roberts* to support its  
10 assertion that the rule enunciated in *Roberts* is truly of "universal application."

### 11 CONCLUSION

12 The Second Motion makes an assumption that APS is purposely withholding  
13 information. Nothing could be further from the truth. APS does not have the requested  
14 information and cannot produce what it does not have. It's just as simple as that. The  
15 Second Motion should be denied.

16 RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of January 2017.

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24 ORIGINAL and thirteen (13) copies  
25 of the foregoing filed this 20<sup>th</sup> day of  
26 January 2017, with:

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